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COMPETITION AS JUSTIFICATION FOR INTERFERENCE WITH EMPLOY-

PLOYMENT OF FELLOW WORKMAN.

That, in the absence of justification, it is actionable to induce an employer by a strike or a threatened strike to discharge or refuse to employ a workman, has been repeatedly held. But notwithstanding many such cases in recent years presenting the question as to within what limits a strike, involving no acts tortious *per se*, may be justified by labor as legitimate competition, the boundary lines remain unmarked. In a large and increasing proportion of these cases the presence or absence of justification must depend upon the object of conduct.

The question has recently arisen in Pennsylvania in the case of *Erdman v. Mitchell,* 56 Atl. 334, which was an action by one labor union against another to enjoin the latter from attempting by strikes or threatened strikes to prevent members of the former from securing or continuing in employment because of their refusal to join the latter union. An injunction was granted on the ground that a strike which has for its purpose the infliction of direct and immediate injury or damage to another for the possible accomplishment of some indirect and remote benefit is unjustifiable. The decision is in accord with the well established rule in Massachusetts, *Plant v. Woods,* 176 Mass. 492; *Vegelahn v. Guntner,* 167 Id. 92, where an unbroken line of authorities reiterates the doctrine that

the presence or absence of malice may be controlling in this class of cases. In the latter State the courts have gone further and held that, regardless of whether the employment be for a specified length of time or at will, to maliciously and without justifiable cause induce an employer to discharge a workman, "whether the inducement be false slanders or *successful persuasion,* is an actionable tort." *Moran v. Dunphy,* 177 Mass. 485.

In *Vegelahn v. Guntner, supra,* Holmes, J., dissents on the ground that, the conflict between employer and employed being competition, the unity of organization sought is necessary to make the contest of labor effectual, and hence a strike which has for its object the strengthening of the union is justifiable; in such a case malice is not present. The contention is not without authority to support it.

In a case somewhat similar to *Erdman v. Mitchell* and *Plant v. Woods, supra,* the New York courts have upheld as legitimate competition the right of a labor union to deprive members of another union of employment. It is said by the court of appeals that where the action of a labor union is based upon proper motives a strike may be justifiable, and that to secure an exclusive preference of employment to its members *on their own terms and conditions,* provided that no force is employed and no unlawful act is committed. is a proper motive. *National Protective Association v. Cumming,* 53 App. Div. 227; affirmed by a divided court in 170 N. Y. 315. In its decision the appellate division relied upon the case of *Allen v. Flood* (1898), A. C. 1. But *Allen v. Flood* has subsequently been carefully ilmited and explained, *Quinn v. Leathem* (1901), A. C. 495, and even in England can now hardly be said to be applicable to this class of cases. *Giblan v. National Amalgamated Laborers' Union,* C. A. (1903) 2 K. B. 600. Moreover, the case of *National Protective Association v. Cumming, supra,* cannot well be reconciled with *Curran v. Galen,* 152 N. Y. 33, representing the earlier line of decisions in that State, and dicta in recent cases would seem to indicate the probability of future modification of this rule.

The foregoing cases are easily to be distinguished from that class in which strikes have been held justifiable which had for their object the maintenance of a scale of wages; *Reynolds v. Everett,* 144 N. Y. 189; the limiting and regulation of the employment of apprentices; *Longshore P. & P. Co. v. Howell,* 26 Ore. 527; or were the result of a refusal to admit competitors to membership or to work with such competitors; *Mayer v. Journeymen Stonecutters' Association,* 47 N. J. Eq. 519. Here, the object of the competitor has been his immediate financial gain, and although competition has resulted in the intentional infliction of damage by interference with another's business, it is held justifiable upon considerations of public policy. Upon this point the decisions of the courts are in practical accord; beyond it they are conflicting.

The case of *The London Guar. & Accident Co., Ltd., v. Horn,* decided last December by the Supreme Court of Illinois, although

not involving the strike element, is instructive. The court held that an employee whose discharge was procured by a company which had guaranteed the employer against loss by injury done to its employees, because of his refusal to accept a small sum in settlement of such a loss, was entitled to recover for his dismissal. The gain ensuing to the company from the reduction of damages payable was distinguished from that secured where the purpose was success in competition, and was held to be a justification of the action taken.

It is obvious that no definite rule can be formulated by which to test the presence or absence of justification in every case. Only a very rough classification is possible, and each case must be largely controlled by its own peculiar facts and circumstances.

MUNICIPAL WATER SYSTEMS—ARE THEY PUBLIC OR PRIVATE PROPERTY OF THE CITY?

Does a municipal corporation owning its water system hold the property in its public or private capacity? It was recently decided in *Rochester and Lake Ontario Water Co. v. Rochester,* 176 N. Y. 166, that after a municipality had constructed a costly water system under legislative permission it was competent for the legislature to pass a subsequent act authorizing a corporation organized under it to lay pipes through the streets of any city lying between the source of supply and the town to be furnished with water. In thus passing through the city of Rochester the company proposed to come into direct competition with the municipal water system, taking away some of the latter's most valuable customers and substantially decreasing its revenues. In the opinion of the three dissenting judges the city should have exclusive control of its water system because, *inter alia,* "to subject this system to competition or interference would be to weaken or destroy it"; the inference being that the system was the private property of the city in which it had acquired vested rights. "A city or other political division," say the dissentient judges, "acts in a dual capacity. In business matters it is treated as a private person."

Whether or not municipal water works are held as the private or public property of the city is a subject upon which the courts disagree. An earlier case in New York takes the ground that property owned and used by the city to supply its inhabitants with water belongs to it in its private right. In *Bailey v. Mayor,* 3 Hill 531, 539, Nelson, J., said: "The powers conferred by the legislature authorizing this great work are not, strictly and legally speaking, conferred for the benefit of the public. The grant is a special private franchise, made as well for the private emolument and advantage of the city as for the public good. The State in its sovereign capacity has no interest in it. It owns no part of the work. The whole investment under the law and the revenue and profits derived therefrom are the private property of the city as much as the lands and houses belonging to it situate within its corporate limits."